

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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DUNCAN J. McNEIL III,

Plaintiff,

v.

Case No. 05-C-0698

UNITED STATES OF AMERICA, *et al.*,

Defendant(s).

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**ORDER DENYING IN FORMA PAUPERIS STATUS ON APPEAL**

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The pro se plaintiff, who is incarcerated in the Spokane (Washington) County Jail, brought a civil action in this court under 42 U.S.C. § 1983, alleging that his civil rights were violated. On August 9, 2005, the plaintiff was granted leave to proceed in forma pauperis. However, by the same order, this case was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous. One day later, judgment was entered dismissing the action. Plaintiff moved for reconsideration, and the court denied his motion on August 24, 2005. On October 21, 2005, the plaintiff filed a notice of appeal. Currently before the court is the plaintiff's request to proceed in forma pauperis on appeal, along with a host of other frivolous motions.

Under Fed. R. App. P. 24(a), a party who has been granted leave to proceed in forma pauperis in the district court may proceed in forma pauperis on appeal without further authorization unless the district court certifies that the appeal is not taken in good faith or determines that the party is otherwise not entitled to proceed in forma pauperis. *See also* 28 U.S.C. §1915(a)(3). A district court should not apply an inappropriately high standard when making good faith

determinations. *Pate v. Stevens*, 163 F.3d 437, 439 (7th Cir. 1998). An appeal taken in “good faith” is one that seeks review of any issue that is not frivolous, meaning that it involves “legal points arguable on their merits.” *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983) (quoting *Anders v. California*, 386 U.S. 738 (1967)); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962). On the other hand, an appeal taken in bad faith is one that is based on a frivolous claim—that is, a claim that no reasonable person could suppose has any merit. *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000).

Plaintiff’s complaints present precisely such a claim. The court dismissed them both because they are incomprehensible and because they were submitted on a photocopied form in an attempt to circumvent a pre-filing review order entered by the United States District Court for the Eastern District of Washington. *See McNeil v. United States*, No. 05-211, 2005 U.S. Dist. LEXIS 26252 (E.D. Wash. Aug. 9, 2005). Plaintiff has provided no reason for the court to revisit its assessment of his complaints. Accordingly, the court concludes that the plaintiff’s appeal should be certified as not having been taken in good faith because no reasonable person could conclude that the claims advanced by the plaintiff have any merit.

For these reasons, the plaintiff’s request to proceed in forma pauperis on appeal is denied. However, the plaintiff incurred the filing fee by filing the notice of appeal. *Newlin v. Helman*, 123 F.3d 429, 433, 434 (7th Cir.1997). The fact that this court is denying the request to proceed in forma pauperis on appeal means that the full filing fee of \$255.00 is due within 14 days of this order. *Id.*; Seventh Circuit Rule 3(b). Failure to pay in full within the time limits will result in a dismissal. *Newlin*, 123 F.3d at 434.

**ORDER**

**IT IS THEREFORE ORDERED** that the plaintiff's request to proceed in forma pauperis on appeal (Docket #12) is hereby **DENIED** because this court certifies that such appeal has been taken in **BAD FAITH**.

**IT IS FURTHER ORDERED** that by November 21, 2005, the plaintiff shall forward to the clerk of this court the sum of \$255.00 as the full filing fee in this appeal. The plaintiff's failure to comply with this order will result in dismissal of this appeal. The payment shall be clearly identified by the case name and number assigned to this action.

**IT IS FURTHER ORDERED** that copies of this order be sent to the warden of the institution where the plaintiff is confined and to PLRA Attorney, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Rm. 2722, Chicago, Illinois 60604.

**IT IS FINALLY ORDERED** that plaintiff's other pending motions (Docket #13) are **DENIED**.

Dated this   7th   day of November, 2005.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge